

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD DESCLAFANI,

Plaintiff,

- against -

**SUPPLEMENTARY
BRIEF IN SUPPORT
OF MOTION FOR
SUMMARY JUDGMENT
OF DEFENDANTS
STIMSONITE
CORPORATION AND
AVERY DENNISON
CORPORATION**

PAVE-MARK CORPORATION, STIMSONITE
CORPORATION, STIMSONITE CORPORATION,
as successor in interest to PAVE-MARK CORPORATION,
AVERY DENNISON CORPORATION and AVERY
DENNISON CORPORATION, as successor in interest
to STIMSONITE CORPORATION,

07 CIV 4639 (SHS)(HP)

Defendants.
-----X

Defendants Stimsonite Corporation and Avery Dennison Corporation provide the following submission pursuant to the Court's Order dated June 9, 2008, regarding the date of manufacture and sale of the kettle at issue.


Attached as an exhibit hereto are records from Iberia Road Markings Corporation, Plaintiff's employer. (Exhibit A to Alten Decl.) The documents demonstrate that the kettle was built in 1989 by Pave-Mark. Jose Freire, president of Iberia Road, explained that "Iron Eagle [an unrelated third-party] pick[ed the kettle] up at 10:46 a.m. on 6/13/89. We buy the truck from Iron Eagle on the spring of 1991." (*Id.*, p. 1.) The technical materials describe the Longliner-brand kettle system "manufactured by Pave-Mark." (*Id.*, p. 3.) The bill of materials shows a 1989 sale date. (*Id.*, p. 5.)

Neither Stimsonite nor Avery Dennison possess any records suggesting that the kettle was manufactured in 1995 or later, consistent with the Pave-Mark asset sale to Stimsonite in 1995, Stimsonite's later asset sale to Avery Dennison, and Avery Dennison subsequent sale of the assets.

While Defendants are happy to provide the Court with the above information to further describe the facts surrounding the matter here, Defendants respectfully submit that the manufacture and sale date of the kettle is not relevant to Plaintiff's claims. In his Complaint, Plaintiff *did not* allege any direct claim against Stimsonite or Avery Dennison, nor has he alleged that Stimsonite or Avery Dennison themselves made or distributed the allegedly defective kettle. (See Complaint, ¶¶ 26-29.) To Plaintiff's credit, the Complaint took care to separately define Pave-Mark, Stimsonite and Avery Dennison as all-capitalized terms, and the Complaint carefully alleged that Stimsonite and Avery Dennison were liable only as successors, not as direct manufacturers or distributors. Plaintiff no doubt made these careful allegations because he knew, like his employer did, that this kettle dates from the late 1980s. As noted in Defendants' prior briefs, Plaintiff bears the burden of marshaling evidence supporting his claim for successor liability and has not done so here. Plaintiff certainly has not provided any evidentiary material demonstrating that the kettle was manufactured or sold by Stimsonite or Avery Dennison, rather than by Pave-Mark.

Defendants Stimsonite Corporation and Avery Dennison Corporation respectfully ask the Court to grant their motion for summary judgment.

Dated: Staten Island, New York
June 26, 2008


JOHN P. CONNORS, JR. (6914)
CONNORS & CONNORS, P.C.
Attorneys for **Defendants,**
STIMSONITE CORPORATION and
AVERY DENNISON CORPORATION
766 Castleton Avenue
Staten Island, NY 10310
(718) 442-1700
Our File No. DBS 23483

JOHN M. ALTEN
ULMER & BERNE LLP
Skylight Office Tower
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113
(216) 583-7000

Attorneys for **Defendants**
STIMSONITE CORPORATION and
AVERY DENNISON CORPORATION

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) ss:

I, John M. Alten, have personal knowledge of the matters set forth in this Declaration.

1. I am co-counsel for Defendants Stimsonite Corporation and Avery Dennison Corporation in the matter titled Desclafani v. Pave-Mark Corporation et al.

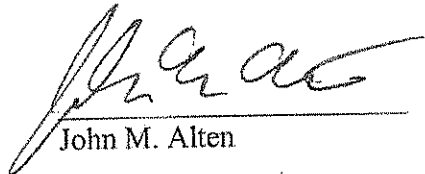
2. In the summer of 2007, shortly after the Desclafani complaint was filed, I contacted Jose Freire, president of Iberia Road Markings Corporation, Plaintiff's employer. I asked him for information regarding Iberia's purchase of the equipment involved in Plaintiff's injury.

3. Mr. Freire told me that the equipment had been purchased by Iberia in 1991. I asked him to send me any business records Iberia had in regard to this issue.

4. In response to my request, on August 1, 2007, Mr. Freire sent me the facsimile attached hereto as Exhibit A.

5. Neither Stimsonite nor Avery Dennison has identified any documents in their possession inconsistent with Mr. Freire's statements.

I declare, under penalty of perjury, that the forgoing is true and accurate.


John M. Alten

6/16/08
Date

EXHIBIT “A”

TEL: (718)387.4111
FAX: (718)387.4225

IBERIA ROAD MARKINGS CORP
104 LOMBARDY ST
BKLYN, NY 11222



DATE 8/1/07 5/25/PM.

NUMBER OF PAGES INCLUDING COVER 12 FAX NUMBER _____

TO: MR. ALTEN

ATTN: _____

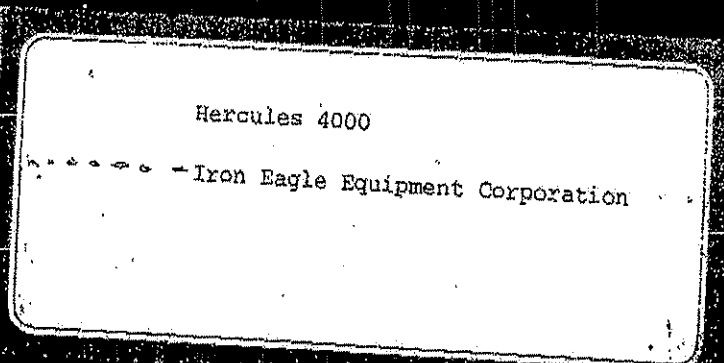
FROM: JOSE G. FREIRE

RE: PAVE MARK KETTLE

MESSAGE: AS YOU CAN SEE ON PAGE 5
PAVE MARK FINISH THE TRUCK AND
IRON EAGLE PICK IT UP AT 10:46 A.M.
ON 6/13/89, WE BY THE TRUCK FROM
IRON EAGLE ON THE SPRING OF 1991

IF THERE IS ANY PROBLEM WITH RECEPTION, PLEASE CALL (718) 387.4111

Jose



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1BERIA ROAD

PAGE 03

INTRODUCTION

The Hercules Series Longliner, as manufactured by Pave-Mark Corporation, is a state-of-the-art self-contained thermoplastic delineation material application system engineered for the delineation professional. The unit has been custom engineered for Iron Eagle Equipment Corporation.

The Hercules Longliner has been designed with features to enable the customer's personnel to efficiently apply large quantities of hot-applied thermoplastic pavement delineation materials by the screed/extrusion method. The unit features two 2,000 pound oil-jacketed melting kettles with control and agitator systems.

The oil-jacketed delivery conduit system and the screed/extrusion dies are heated by means of an oil circulation system utilizing the kettles as the oil reservoirs. The dies are air actuated and controlled by an electronic timing system.

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PAGE 04

VEHICLE (Chassis)

The vehicle upon which the Hercules Longliner equipment is mounted, and which is by reference a part of the Hercules system, is a diesel powered Mercedes-Benz Model L1319 chassis with maximum gross vehicle weight of 30,000 pounds.

The platform mounted on the vehicle chassis is of all welded steel construction. The bed is approximately 216 inches long and 96 inches wide. The longitudinal structural members are of 9 inch steel channel. The transverse structural members are 3 inch steel channel. The structural frame is overlaid with 3/16 inch non-skid steel plate. The rear of the cab is protected by a 96 inch wide by 42 inch high bulkhead. The rear 44 inches of the bed is raised 9 inches to accommodate the dispensing system carriages and to serve as an operator platform. Mounted on the raised rear portion of the bed are the operator control stations and the glass sphere storage tank. The glass sphere storage tank is located on the rear portion of the bed between the operator consoles.

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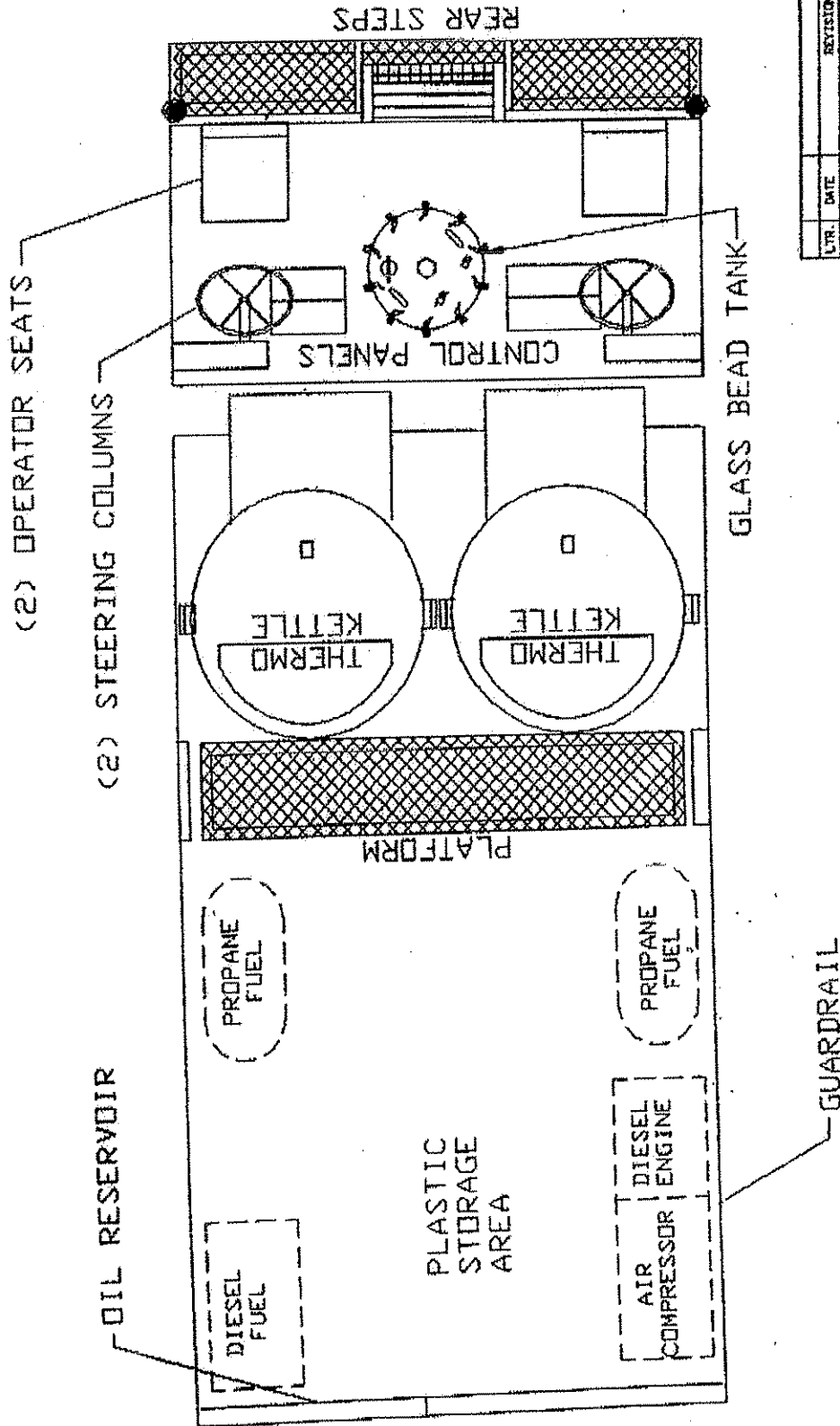
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PAGE 05

BILL OF MATERIAL

| ITEM | QTY | PART NO. | DESCR |
|------|-----|----------|-------|
|------|-----|----------|-------|



| LTR. | DATE | REVISIONS |
|------|------|---|
| | | THE INFORMATION ON THIS DRAWING IS THE PROPERTY OF PAGE-MARK CORP. IT CANNOT BE USED OR REPRODUCED IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF PAGE-MARK CORP. |

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ATLANTA, GA 30318 (404) 557-5700
 FAX: (404) 557-5701
 E-MAIL: INFO@PAGE-MARK.COM
 WWW.PAGE-MARK.COM

IRON EAGLE

06-13-89
 10:46 AM

KETTLE SYSTEM

The Pave-Mark manufactured thermostatically regulated Vulcan kettles incorporated as an integral part of the Hercules Series 4000 Longliner are of all steel construction and designed to provide dependable, trouble-free service. The kettles are of such dimensions as to contain approximately 2,000 pounds of molten Pave-Mark thermoplastic pavement delineation material when filled to optimum operating capacity. The oil-jacketed kettles are engineered to utilize propane fuel, and to provide for agitation of the molten material utilizing hydraulically powered agitation systems with the necessary and conveniently accessible controls. The kettles serve as reservoirs for the hot-oil circulating systems utilized to provide heat to the two material conduit and dispensing systems.

Agitation for the kettles is provided by a hydraulic pump, powered by an auxillary diesel engine, and hydraulic motors mounted above each of the individual kettles. The agitation systems are designed to prevent the solid components of the molten material (i.e. glass spheres, pigment, etc.) from settling and to insure a supply of homogenously blended material to the dispensing devices.

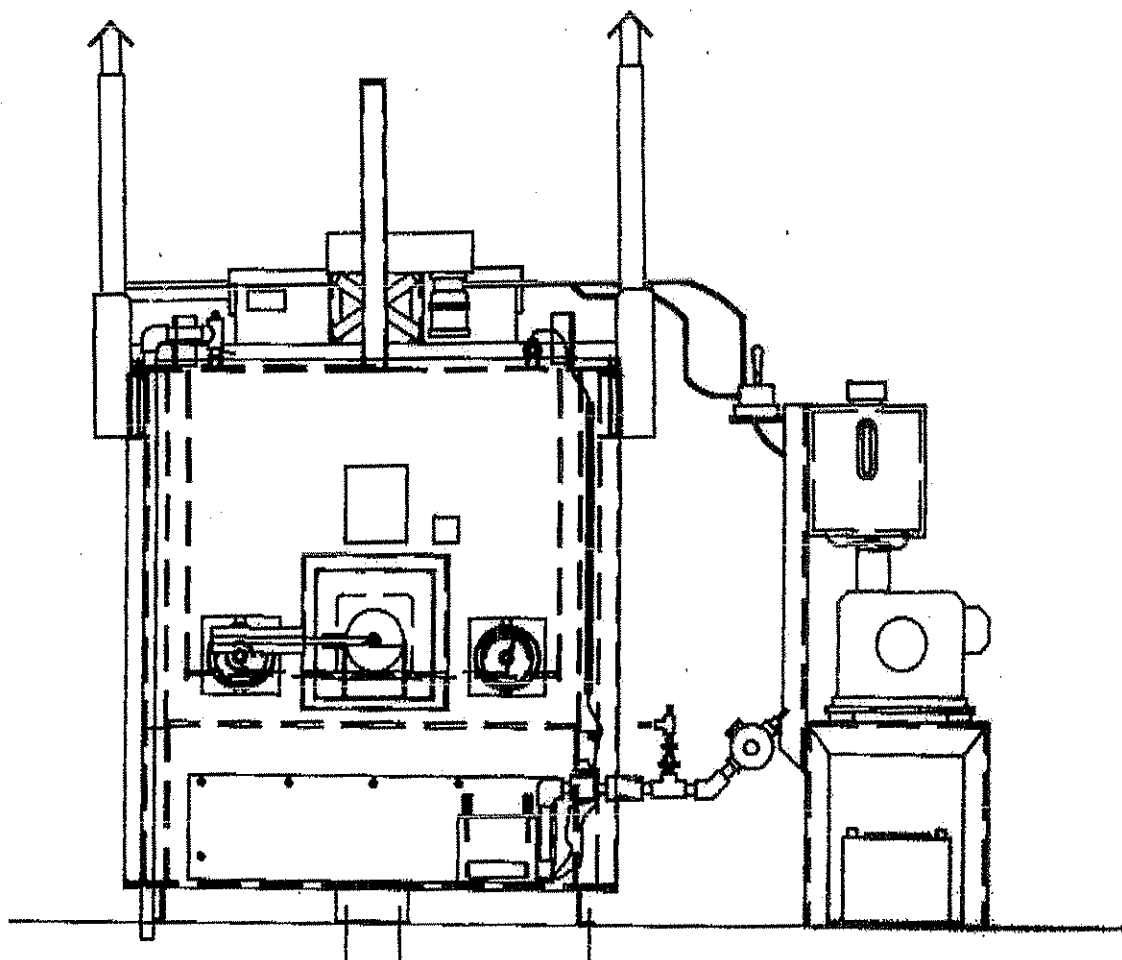
The thermostatically regulated burner system is composed of a burner unit with appropriate industry accepted controls and regulators to provide for safe operation. The burner unit consists of eight-eight number 73 nozzles with approximately three hundred eighty five thousand BTU input capacity. Propane is supplied through a system which consists of a pressure regulator, a pilot assembly providing for main gas control, and a by-pass equipped, high capacity gas thermostat. This system provides positive control of the gas supply to the main burner unit and prevents gas flow without pilot flame to actuate the thermocouple controlled pilot assembly.

VULCAN KETTLES

Thermoplastic Pavement Marking Premelter
Series 600 1200 1500 2000 2500

Owners Handbook

Serial # _____



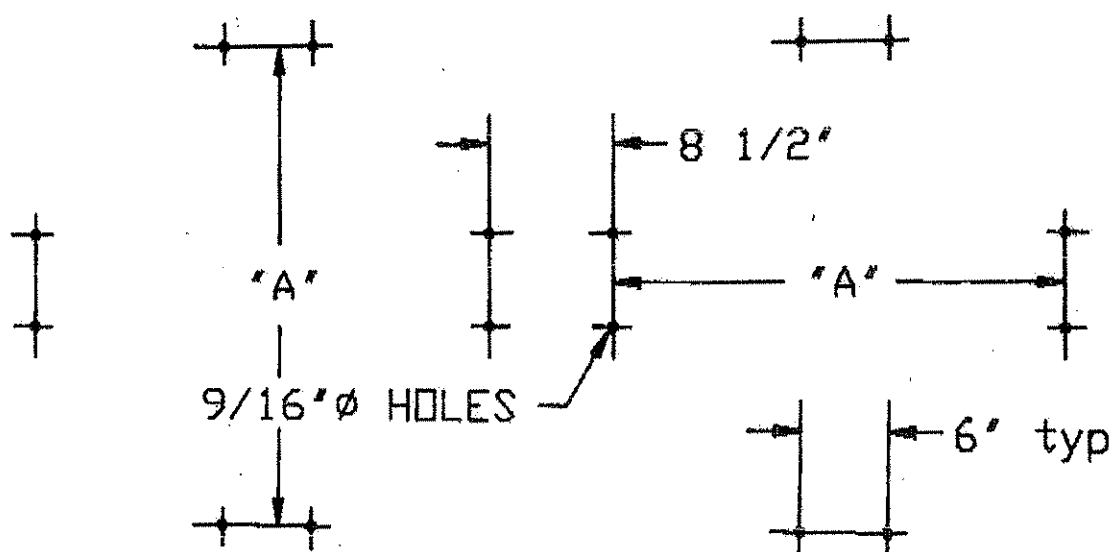
Pave-Mark®
CORPORATION

PAVE-MARK VULCAN
PREMELTING KETTLE
OPERATION AND MAINTENANCE

PAVE-MARK'S Vulcan Premelting Kettles are specifically engineered to efficiently and homogenously melt thermoplastic pavement marking materials supplied in either block or granular form.

I. KETTLE INSTALLATION:

Kettles should be secured with (8) 1/2-13 bolts to a metal trailer or truck bed floor plate. See the hole layout below, it is shown for two kettles.



| KETTLE SIZE | A |
|-------------------|---------|
| 40 GAL-600 lb * | 30 3/4" |
| 80 GAL-1200 lb * | 35 3/4" |
| 100 GAL-1500 lb * | 35 3/4" |
| 135 GAL-2000 lb * | 35 3/4" |
| 170 GAL-2500 lb * | 35 3/4" |

* Weight is an approximation based on heated thermoplastic weighing 15 pounds per gallon. Thermoplastic formulation weights per gallon can vary plus or minus 20%. Kettle volume, for safety, is measured 5 inches below cover.

II. PROPANE GAS CONNECTIONS:

Use a minimum of two 100 pound tanks for propane supply with a pressure gauge capable of reading up to 300 PSI.

08/01/2007 16:28 17183874225

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PAGE 09

PREMELTER OIL CHECK:

1. Check hydraulic fluid level at tank temperature sight gauge (Fig. A, #23). Use Gulf Harmony 32 hydraulic fluid or its equivalent. Check hoses and fittings for leaks.
2. Check heat transfer oil level is up to ring on dip stick (Fig. B, #24) on kettle. Use one of the following heat transfer oils: Gulf Security 180M, Texaco Regal oil "G", Pennzoil Vitro oil 72, or Martemp 2525. **DO NOT MIX OIL BRANDS.**
3. Use dip stick (Fig. A, #2) to check engine oil level. Service with SAE #30 oil. Check engine air cleaner bowl oil level. Change oil at least every 50 engine working hours.
4. Refer to your engine manual, for further information.
5. Check LP gas fittings from main gas supply tank to premelter kettle burners.

IV. LIGHTING PREMELTER KETTLE BURNER:

1. Turn Robert Shaw control valve (Fig. B #25) and Pilot Safety light valve knob (Fig. B, #26) to "OFF" position.
2. Turn main LP gas tank valves to "ON".
3. Turn Pilot Safety light valve to "ON".
4. Open burner access door (Fig. B, #34) located below material discharge valve. Depress pilot Red Button (Fig. B, #26) and light the pilot (Fig. A, #21). Keep pilot Red Button depressed for 60 seconds. **CAUTION:** If pilot fails to light, wait until gas is absent prior to relighting. Protect body from flame.
5. Close burner access door.
6. Allow pilot flame to stabilize a few minutes.
7. With door closed, raise Robert Shaw control valve to 350 F.
8. If you have an air jacketed kettle load it with 150 to 300 lb. of material, depending on the size you have. (about 1/4 full).
9. When material temperature gauge (Fig. B #27) approaches 350 F reset temperature setting above 400 F. to as high as 450 F, depending on weather conditions and quantity of materials you plan to insert in the kettle. If you have an oil jacketed kettle you should **NEVER ALLOW HEAT TRANSFER OIL TEMPERATURE TO EXCEED 550 F.** Start feeding thermoplastic into the kettle once oil temperature exceeds 400 F.
10. Low pressure flame can be used during initial heat up to soften material which has hardened in the molasses type discharge valve. (Fig B, #35) Optional plug valve does not use this burner (Fig. B, #30).

V. THERMOPLASTIC MATERIAL FEED:

1. Make sure material draw off valve (Fig. B, #29) is closed.
2. Practice timing the feeding of granulated bags or hand size chunks of block thermoplastic into the kettle. Once molten, add more material.
3. When material temperature gauge approaches 350 F and the material is molten, turn on your engine and commence agitating material.
4. Material should be heated between 400-440 F. On cooler working days, higher temperatures are required. (Up to 440 F).

08/01/2007 16:28

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1BERIA ROAD

PAGE 10

5. Occasionally insert a long stem thermometer in thermoplastic to check the calibration of your kettle material temperature gauge.
6. The higher the volume of molten material in kettle, the quicker fresh cold material will achieve working temperature.
7. During non working or extensive travel time, reduce the temperature of the material. Although heat stable, thermoplastic material should not be held more than 4 hours at or near its application temperature without being used.
8. Constantly turnover material adding fresh material.
9. Read and understand "Standard practices for successful alkyl hydrocarbon and epoxy thermoplastic pavement markings application".

VI. ENGINE OPERATION: (READ ENGINE OPERATION MANUAL)

1. Engine throttle should be approximately one third open.
2. Hydraulic selector valve should be in neutral position during the engine starting cycle.
3. Prime engine by depressing push button on engine regulator.
4. Turn engine key (Fig. A, #3) to start engine.
5. Let engine warm up a few minutes, then place hydraulic selector valve (Fig. A, #4) forward to engage material agitation blades.
6. Open material feed door and check for movement of paddles. If no movement, material has not liquefied sufficiently. Return selector valve to neutral until material melts.

VII. HYDRAULIC SYSTEM:

1. Selector valve (Fig. A, #6) allows for forward, reverse and neutral operating positions. Obstructions such as solid material or foreign debris will prevent free rotation of paddle but will not damage hydraulic system.
2. Needle valve (Fig. A, #4) is used to adjust the speed of the mixing paddle.
3. Check hydraulic oil temperature and maintain below 180 F.

VIII. SHUT DOWN:

1. Turn temperature control and pilot light valve to "OFF" position. Depress red button on pilot light valve for approximately 10 seconds to shut off flame. Look inside lighting door to insure that flame is out.
2. Continue material motor agitation until oil and material temperature are below 300 F.
3. Turn main gas control valves on propane tanks "OFF".
4. Turn engine ignition switch off to protect battery.
5. Keep material feed door closed to avoid water or foreign matter from entering.
6. Material level should be kept low for next days introduction of fresh material.

IX. MAINTENANCE:

1. DAILY;
 - a) Check hydraulic oil level (Fig. A, #1)
 - b) Check that hydraulic shut-off valve (Fig. A, #7) is fully open.

08/01/2007 16:28

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PAGE 11

- c. Check hydraulic pump coupler for alignment and possibly missing lock ring. (Fig. A, #8)
- d. Check hydraulic lines for leaks and hose deterioration.
- e. Make sure cap is on LP gas preset regulator. (Fig. B, #31)
- f. Check engine oil level (Fig. A, #2).
- g. Check oil temperature probe packing nut (Fig. B, #32) for leaks. Tighten nut without over torquing. Packing may periodically require replacement.
- h. Check propane tanks condition. They should be leak and rust free.

3. WEEKLY;

- a. Grease shaft bearing (Fig. A, #9) with lubriplate AC-2A, Enco Andock B or equivalent.
- b. Check heat transfer oil level (Fig. B, #24).
- c. Change engine oil at least every 50 hours of operation, and maintain oil change records.
- d. Check material and oil temperature gauges with a long stem high temperature thermometer. Recalibrate gauges when necessary.
- e. Check interior of kettle and remove possible excessive resin build up, particularly inside kettle top.

4. EVERY 6 MONTHS;

- a. Remove and replace hydraulic filter (Fig. A, #10).

5. YEARLY;

- a. Drain a quart of heat transfer oil and have analyzed by oil company for flash point, carbon and other impurities. (Minimum flash point of oil should be above 490 F).
- b. Replace hydraulic fluid with Gulf Harmony 32 or equal.

SEASONAL SHUTDOWN:

- 1. Drain material and clean inside of kettle.
- 2. Lubricate all grease fittings.
- 3. Clean exterior and, if required, repaint with high temperature silver paint.
- 4. Disconnect and paint propane tanks.

CHANGING MATERIAL COLORS OR MATERIAL RESIN TYPES

- 1. Maintain an inventory of reuseable Pave-Mark material boxes for draining material.
- 2. White To Yellow-drain all of the remaining material from kettle into Pave-Mark drain-off boxes for later reuse. Scrape as much material from the kettle as possible while warm; including discharge spout. Residue white material will disappear into your fresh yellow material.
- 3. Yellow-To-White-thoroughly drain and wipe clean kettle interior of all yellow materials. You may melt 50 pounds of new white material for dilution of yellow residue. This material, when discharged into a drain-off box can be reused with your next yellow color use.
- 4. Alkyd, Hydrocarbon and Epoxy thermoplastic materials are kettle incompatible with each other. Therefore, the kettles should be nearly completely cleaned out when changing material types. Pave-Mark cleaning fluids and recommendations are available for intense kettle clean-out.

08/01/2007 16:28

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PAGE 12

XII. PARTS LIST:

| Fig. No. | Part Description | Part No. |
|----------|------------------------------|-----------|
| A #1 | SIGHT GAUGE | E-PM05076 |
| A #2 | KOHLER ENGINE | E-PM95001 |
| A #4 | SPEED VALVE | E-PM98108 |
| A #5 | PADDLE ASSEMBLY | E-PM98113 |
| A #6 | DUKES CONTROL VALVE 1/2" | E-PM98020 |
| A #7 | GATE VALVE 1/2" | E-PM98070 |
| A #8 | COUPLER | E-PM98114 |
| A #9 | BEARING 1 1/2" RCJT | E-PM98111 |
| A #10 | HYDRAULIC FILTER | E-PM98060 |
| A #11 | ENGINE CARBURETOR | E-PM05035 |
| A #12 | HYDRAULIC OIL | E-PM05120 |
| A #13 | SPROCKET DS15-1" | E-PM05147 |
| A #14 | SPROCKET DS30-1 1/2" | E-PM05148 |
| A #15 | HYDRAULIC PUMP | E-PM98102 |
| A #16 | HYDRAULIC MOTOR | E-PM05101 |
| A #17 | SINGLE LINK CHAIN | E-PM05148 |
| A #18 | AGITATION SHAFT | E-PM98106 |
| A #19 | CHAIN GUARD | E-PM98122 |
| A #20 | UPPER SHAFT BEARING PLATE | E-PM98112 |
| A #21 | PILOT, LIGHT | E-PM96045 |
| A #22 | BURNER X88 | E-PM96101 |
| | BURNER X44 (600 SERIES ONLY) | E-PM96111 |
| A #23 | BURNER JET | E-PM96110 |
| B #24 | HEAT TRANSFER OIL INLET | E-PM01525 |
| B #25 | THERMOSTAT | E-PM05175 |
| B #26 | PILOT VALVE (BASO) | E-PM05127 |
| B #27 | GAUGE, MATERIAL | E-PM05070 |
| B #28 | GAUGE, OIL | E-PM05070 |
| B #29 | MOLASSES DRAIN VALVE | E-PM98110 |
| B #30 | INTERNAL PLUG VALVE | E-PM98105 |
| B #31 | LP REGULATOR | E-PM98101 |
| B #32 | STUFFING BOX | E-PM05160 |
| B #33 | OIL THERMOCOUPLE | E-PM05170 |
| B #34 | LIGHTING DOOR | E-PM98123 |
| B #35 | MOLASSES VALVE BURNER | E-PM98121 |


FOR PARTS ORDERING OR TECHNICAL INSTRUCTION, PLEASE CONTACT:

PAVE-MARK CORPORATION
EQUIPMENT DIVISION P.O. BOX 94108
ATLANTA, GA. 30318 (404) 351-9780
FAX No. (404) 350-9673

104
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NANCY
RAMSEY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via the Court's ECF system this 26th day of June, 2008, to all counsel of record as indicated below.


JOHN P. CONNORS, JR. (6514)

TO: WINGATE, RUSSOTTI & SHAPIRO
Attorney for Plaintiff
420 Lexington Avenue
New York, NY 10170
Attn: William P. Hepner, Esq.
(212) 986-7353